

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SANDRA HERRERA, et al.

Plaintiffs,

v.

PIERCE COUNTY, et al.

Defendants.

CASE NO. C95-5025RJB/JKA

REPORT AND
RECOMMENDATION

NOTED FOR: January 14, 2011

This 42 U.S.C. 1983 class action was filed January 19, 1995. The matter has been referred to the undersigned Magistrate Judge.

REPORT

Before the court is Plaintiffs' Motion for Notice to the Class Re: Settlement and Proposed Termination of Relief. (Dkt.# 360). The motion relates to the parties proposed stipulations filed as Dkts# 357, 358, and 359. The defendants object to the motion asserting that notification is not required under Fed. R. Civ. P. 23 and will result in "unnecessary and extensive delay and expense." (ECF No. 361). Defendants support their position with the history of the case.

1 Plaintiffs, in their reply, argue this is the first time the entire case has been dismissed, and given
2 the “significant evidence of ongoing constitutional violations on the eve of this latest settlement
3 notice is required. Plaintiffs’ argument is misguided and should be rejected.” (ECF No. 362).

4 Having reviewed all materials submitted in support of and in response to said motion, as
5 well as the files and records herein, the undersigned concludes that no further notice is required
6 and that plaintiff s’ motion should be denied.

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8 In reaching this conclusion, the court first considered how the class was certified. On
9 March 30, 1995, the undersigned filed a Report and Recommendation to certify the class pursuant
10 to Fed. R. Civ. P 23 (b)(3). (Dkt. # 19)¹. Both parties objected to the report and agreed the class
11 should be certified pursuant to Fed. R. Civ. P. 23 (b)(2) (Dkt. # 24 and 26). On May 12, 1995
12 District Judge Franklin D. Burgess entered an order certifying the class, which order considered
13 objections to the Report and Recommendation by the undersigned. The order did not specifically
14 indentify the section under which the class was certified (Dkt. # 27).

15
16 *A Stipulated Order and Final Judgment* was entered in this matter March 28, 1996. (Dkt
17 #89). Pursuant to the terms of this Stipulated Order and Final Judgment the court retained
18 jurisdiction “until such time as the court is satisfied that the terms of this Stipulated Order and
19 Final Judgment have been implemented and that further supervision by the court is no longer
20 necessary.” (Dkt. # 89, page 16, ¶16.1). Pursuant to Fed. R. Civ. P. 23 (e) the court must direct
21 notice to all class members who would be “bound by the proposal.” The class was notified. (Dkt.
22 #85). The plaintiff’s class did not seek damages, and the settlement specifically states “nothing in
23 this Stipulated Order and Final Judgment shall be deemed to waive the rights at law of any person
24 to seek damages.” (Dkt. # 89, page 14, ¶ 14.1). Further notice is not necessary, All activity and
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26

¹ The first 120 or so documents in this action are not part of the electronic file and are maintained in hard copy in the clerk’s office. ECF refers to the Electronic Case file while Dkt. refers to the paper record (hard copy).

1 court involvement since the entry of the Stipulated Order and Final Judgment on March 28, 1996
2 has been for the purpose of monitoring and implementing the terms of the final judgment. No
3 person currently housed at the jail is precluded from filing any action because of the terms of the
4 settlement or the court's decision to terminate supervision over this case. Any person with proper
5 standing has the ability to bring an action for damages or injunctive relief if the conditions at the
6 jail violate their constitutional rights. The injunctive nature of the relief granted in this action has
7 been remedial in nature.
8

9 **RECOMMENDATION**

10 Based on the foregoing discussion, the undersigned recommends that plaintiffs' motion to
11 notify class members be denied, as the same is not required under Fed. R. Civ. P. 23 (e).
12

13 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have fourteen
14 (14) days from service of this Report to file written objections. See also, Fed. R. Civ. P. 6. Failure
15 to file objections will result in a waiver of de novo review by the district court. See 28 U.S.C. 636
16 (b)(1)(C). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
17 matter for consideration on January 14, 2011, as noted in the caption.
18

19 Dated this 20th day of December, 2010.
20

21 /s/ J. Kelley Arnold
22 J. Kelley Arnold
23 United States Magistrate Judge
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